



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 10 1996

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Implementation of the Small Business Regulatory Enforcement Fairness Act

FROM: Eric Schaeffer, Director
Office of Planning and Policy Analysis

TO: OECA Office Directors
Regional Counsel
Enforcement Coordinators

Parts of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), enacted on Friday, March 29, 1996, are effective immediately and have significant implications for OECA. Implementation of SBREFA requires decisions by OECA and EPA on a number of issues. An OECA memo, dated April 3, 1996, summarizes the major enforcement-related provisions in SBREFA. An OGC memo dated April 2, 1996, attached, discusses SBREFA's implications for Agency rulemaking. (The last two pages of the OGC memo lay out the calendar for when particular rulemaking requirements are effective.) More complete Agency guidance will follow.

Because of the many enforcement implications of the changes to rulemaking, we need your assistance in compiling a list of on-going and anticipated OECA-led rulemakings. We ask each Office Director to please compile, to the best of your knowledge, OECA rules that your office is currently or anticipates working on during the course of the next year. We will compare OECA's list with that maintained by OPPE and OSDBU, so as to ensure both an accurate agency rule calendar and adequate OECA representation in all aspects of new rulemaking requirements. Please ask your representative on the Regulatory Reform Workgroup (see list at end) to provide your list to James McDonald (564-4043) by COB Monday, April 15th.

Please note especially that the following OECA actions are affected immediately:

- **OECA pleading in administrative actions:** The Equal Access to Justice Act now allows award of attorney's fees to a party (including expanded definition of small entities) according to a proportionality and reasonableness test of "demand" based on final adjudicative order or civil judgment. ORE is considering a revision of our pleading



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practice in administrative actions similar to that in civil actions, to provide for pleading up to the statutory maximum.

- **Enforcement personnel communications or contact with regulated small entities, e.g. through audits, on-site inspections, compliance assistance, or other enforcement activities:** An SBA Regulatory Enforcement Ombudsman will receive, collect, and report annually to Congress on confidential comments from small entities and SBA regional Regulatory Fairness Boards about agency enforcement personnel and "excessive enforcement actions," including ratings of office responsiveness. Agency employee identities are kept confidential pursuant to the Inspector General Act of 1978. We are reviewing whether additional guidance is needed regarding the documentation of communication and contact with regulated small entities.
- **"Informal" guidance applying the law to facts provided by a small entity:** Beginning June 27, 1996, any such guidance may be considered as evidence of reasonableness or appropriateness of proposed fines, penalties, or damages sought against the small entity in any civil or administrative action.
- **OECA personnel involved in rulemaking, relying on recently effective rules, or anticipating relying on rules scheduled to be effective soon:**

Major rules promulgated on or after March 1, 1996 and before March 29th are subject to Congressional review but effective dates remain the same; and all agency rules (non-major and major) promulgated on or after March 29, 1996 entail new requirements, are subject to Congressional review, and major rules usually have postponed effective dates.

Because effective dates are tied to calendar days and Congressional review to legislative or session days, rules that become effective--and enforceable--usually will still be subject to Congressional review and disapproval.

A "small entity compliance guide" is required for any rule proposed after March 29, 1996 that has significant effects on a substantial number of small entities (whether or not a major rule). In any civil or administrative action for a violation occurring after June 27, 1996, any "small entity compliance guide" designated as such by EPA may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties, or damages. We are reviewing all the implementation aspects of this provision, including the extent to which OECA personnel should be involved in the writing, review, and designation of such guides.

Should you have any questions about implementation of SBREFA, please feel free to call Kate Perry at 564-4059. For your information, the Regulatory Reform Workgroup representatives are:

Kate Perry, OPPIA

Lisa Comer, OPPA
James McDonald, OPPA
Elliott Gilberg, OC (small business issues)
David Schnare, OC
Mike Penders, OCE
Chris Menen, ORE
Scott Garrison, ORE
John Fogarty, ORE (alternative means of compliance issues)
Bob Kinney, ORE (pleading issues)
Marshall Cain, OFA
Bob Kenney, OSRE

Attachment

cc: Jon Silberman
Avi Garbow
Lynn Vendinello
Regulatory Reform Workgroup



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 2, 1996

MEMORANDUM

OFFICE OF
GENERAL COUNSEL

SUBJECT: The Small Business Regulatory Enforcement Fairness Act of 1996

FROM: Jonathan Z. Cannon
General Counsel

A handwritten signature in dark ink, appearing to read "Jonathan Z. Cannon", written over the printed name and title.

TO: Administrator
Deputy Administrator
Assistant Administrators
Regional Administrators
Associate Administrators

(final version)

April 2, 1996

SUBJECT: The Small Business Regulatory Enforcement Fairness Act of 1996

FROM: Jonathan Z. Cannon
General Counsel

TO: Administrator
Deputy Administrator
Assistant Administrators
Regional Administrators
Associate Administrators

On March 29, 1996, the President signed into law the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA or Act). Current and future EPA rulemakings are affected by the Act in significant ways. The purpose of this memorandum is to provide you with early guidance on the Act's effect on EPA rulemaking activities.

Briefly, SBREFA has three key components. Subtitles A, B and C of the Act all pertain to enforcement of regulations against small businesses and other small entities (see attachment for relevant definitions). These subtitles, which take effect June 28, 1996, call on agencies to establish programs and policies to assist small entities in their efforts to comply with regulatory requirements and generally to reduce or waive penalties levied on first-time violators. The new provisions also establish several mechanisms for overseeing agency enforcement practices with respect to small entities. We expect that the enforcement-related subtitles of SBREFA will be described in more detail in a later memorandum.

Subtitle D of the Act amends and strengthens the Regulatory Flexibility Act (RFA) in several significant ways. As you know, the RFA requires agencies to prepare regulatory flexibility analyses for every proposed and final rule (with some limited exceptions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Regulatory flexibility analyses are to assess the impact of the rule on small entities and consider alternative ways of reducing those impacts.

SBREFA Subtitle D, which takes effect June 28, 1996, requires more rigorous regulatory flexibility analyses. It also requires EPA and OSHA to undertake a small entity stakeholder process involving the Small Business Administration (SBA) and the Office of Management and Budget (OMB) prior to proposing a rule for which a regulatory flexibility analysis is required. In addition, it subjects agency compliance with many aspects of the amended RFA (including "no significant impact" certifications and regulatory flexibility analyses) to judicial review.

Subtitle E of SBREFA establishes a streamlined opportunity for Congress to review and potentially disapprove rules promulgated on or after March 29, 1996 and "major" rules (see attachment for definition) promulgated on or after March 1, 1996. With limited exceptions, it provides that no rule promulgated on or after March 29, 1996 may take effect until it is submitted to Congress and the Comptroller General along with specified supporting documentation, and that no major rule may take effect any earlier than 60 days after (1) its submission to Congress or (2) its publication in the Federal Register, whichever is later.

Obviously there is much to be done to implement SBREFA's provisions effectively. Attached is a document explaining the most critical near-term effects of SBREFA on agency rulemakings. Because of the desirability of providing early guidance on the Act to EPA managers, this document is necessarily a preliminary analysis; we plan to follow it up with more complete guidance on SBREFA's requirements. Also attached are a copy of SBREFA and a memorandum from OIRA which provides additional information on the submission of rules to Congress and the Comptroller General.

Please contact me or my staff (Nancy Ketcham-Colwill (260-7624), Lorie Schmidt (260-5327) or Lisa Friedman (260-7697)) with any questions you may have. For particular rules, you can also contact the assigned OGC attorney.

Attachments (4)

- Effects of SBREFA on Agency Rulemakings
- SBREFA Timelines
- SBREFA
- OIRA Memorandum

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- Effects of SBREFA on Agency Rulemakings
- SBREFA Timelines
- SBREFA
- OIRA Memorandum

EFFECTS OF SBREFA ON AGENCY RULEMAKINGS

I. EFFECTIVE DATE OF RULES AND CONGRESSIONAL REVIEW

- A final rule promulgated on or after March 29 cannot take effect until the rule is sent to Congress and the Comptroller General for review. With limited exceptions (see below), no generally applicable rule¹ promulgated on or after March 29, 1996, may take effect before the agency submits to Congress and the Comptroller General a report including
 - a copy of the rule,
 - a concise statement relating to the rule, including whether it is a "major" rule (defined below), and
 - the proposed effective date of the rule.
- Agencies must submit other rule-related materials to Congress and the Comptroller General for review. On the date it submits the report to Congress, the agency must also submit to the Comptroller General and make available to Congress the following:
 - a complete copy of any cost-benefit analyses of the rule,
 - any regulatory flexibility analyses and review panel report, or any certification of no impact, produced by the Agency under the RFA, and a description of the Agency's compliance with the outreach requirements of RFA § 609(a)²,
 - materials relevant to the Agency's compliance with specified provisions of the Unfunded Mandates Reform Act of 1995 (UMRA)³, and
 - any other relevant information or requirements under any other Act and any relevant Executive Orders⁴.
- Except for "major" rules, once a rule is submitted to Congress as part of the required report, the rule will take effect as provided by otherwise applicable by law.

¹Rules of particular applicability, including rules that approve or prescribe rates, wages, prices, corporate structures and the like, and rules relating to agency management or structure are exempt from this provision.

²The statutory provision describing what RFA-related materials the Agency must submit is not entirely clear, so this guidance may change.

³This provision fails to make clear what UMRA-related documents must be submitted; guidance will be forthcoming.

⁴Once again, it is not clear to what materials this provision refers; guidance will be forthcoming.

- "Major" rules promulgated on or after March 29 cannot take effect for at least 60 days. In the case of "major" rules, the rule may not take effect any earlier than 60 days after (1) its submission to Congress or (2) its publication in the Federal Register, whichever is later.
- Definition of "major" rule. A "major" rule is defined as a rule that the Administrator of OIRA finds is likely to result in:
 - an annual effect on the economy of \$100,000,000 or more;
 - a major increase in costs or prices to consumers, industries, governments or geographic regions; or
 - significant adverse effects on competition, employment, investment, productivity, innovation and US firms' ability to compete with foreign counterparts
 OIRA's finding is not judicially reviewable.
- Major rules promulgated on or after March 1, 1996 and before March 29, 1996, are subject to congressional review and potential disapproval, but their effective dates are not delayed.
- There are a few exceptions to the general requirements concerning the effective date of rules. A rule may nevertheless take effect as provided by otherwise applicable law or as determined by the Agency, under the following circumstances:
 - where the President makes a determination in an Executive Order that the rule must take effect at an earlier date because the rule is necessary in light of an imminent threat to health or safety or other emergency, for enforcement of criminal laws, or for national security, or is issued pursuant to an international trade agreement, or
 - where the agency has exempted itself from public notice and comment rulemaking requirements based on a "good cause" finding that such procedures are impracticable, unnecessary or contrary to the public interest.
- If Congress disapproves a rule, it cannot take effect or continue in effect unless the President takes certain specified actions. If Congress enacts a joint resolution disapproving a rule (see next section), the rule does not take effect (or continue in effect if it previously took effect) unless and until the President signs a veto of the resolution and Congress either votes and fails to override the veto or Congress has been in session thirty days after receiving the President's veto without acting on the veto. The President may allow the rule to take effect

following his veto and before the expiration of the 30-day period if he executes an Executive Order as described above.

II. CONGRESSIONAL DISAPPROVAL OF RULES

- SBREFA establishes special Congressional rules of order to allow expedited consideration of a joint Congressional resolution to disapprove a rule. All rules promulgated as of March 29, 1996, and all major rules promulgated as of March 1, 1996, are subject to congressional disapproval via expedited legislative procedures. The President may veto any legislation disapproving a rule, and Congress may override the veto by a two-thirds vote of each House.
- Congress has 60 days from submission of the rule or publication of the rule in the Federal Register (whichever is later) to use the expedited disapproval procedures. In calculating the 60-day period, adjournments by either House of more than 3 days do not count.
 - If a rule is submitted or published within 60 days of the end of a congressional session or during a congressional recess, Congress' review period starts the 15th day after Congress reconvenes, but the rule's effective date is still only delayed by 60 days from the rule's submission or publication.
- The Comptroller General must advise Congress on agencies' compliance with the RFA and UMRA. To assist Congress in its review of major rules, the Comptroller General is to provide a report on each major rule 15 days after a major rule is submitted to the Hill or published in the Federal Register. The report is to assess the rulemaking agency's compliance with the Regulatory Flexibility Act and the Unfunded Mandates Reform Act.
- Statutory and court-ordered rulemaking deadlines are automatically extended by 1 year if Congress disapproves a rule. If a rule that was subject to a statutory or court-ordered deadline does not take effect because of enactment of a joint resolution disapproving the rule, the deadline is extended until 1 year after the date of enactment of the joint resolution. Deadlines "relating to or involving" a rule that do not take effect because of Congressional disapproval are also extended for 1 year.

III. RULEMAKING REQUIREMENTS

- SBREFA significantly amends the RFA; these amendments apply to rules proposed or promulgated after June 27. All rules proposed or promulgated after June 27, 1996, are subject to the new requirements of the amended RFA, and

agency compliance with many of those requirements for these rules will be judicially reviewable.

- "No significant impact" certifications under the RFA must be accompanied by a statement of their factual basis and are judicially reviewable. A regulatory flexibility analysis is required for every proposed and final rule unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Any certification issued after June 27, 1996 must be accompanied by a statement of its factual basis, and will be judicially reviewable.
 - "Small entities" include small businesses, small governmental jurisdictions and not-for-profit organizations that are "not dominant" in their field. SBA rules define small business in terms of the number of persons employed and in some cases by annual revenues as well. In general, businesses employing 500 persons or less are considered "small." Small governmental jurisdictions include towns, cities and counties of 50,000 persons or less.
- Regulatory flexibility analyses under the RFA must address additional issues and are judicially reviewable. The final regulatory flexibility analysis for rules promulgated after June 27, 1996 must meet more rigorous requirements, and agency compliance with those requirements is judicially reviewable. Also, a summary of the final analysis must now be published in the Federal Register with the rule. The new requirements for final analyses include:
 - providing an estimate of the number of affected small entities "or an explanation of why no estimate is available,"
 - describing projected reporting, record keeping and other compliance requirements, and
 - describing "the steps the agency has taken to minimize the significant economic impact on small entities consistent with the state objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternative adopted" and an explanation of why each significant alternative was rejected.
- Unless EPA certifies that a proposed rule will have "no significant impact", it must follow a prescribed process for obtaining small entity comments on the rule. For rules proposed after June 28, 1996, the agency must undertake prior to proposal a prescribed small entity stakeholder process unless it certifies that the rule will not have a significant impact on a substantial number of small entities. Compliance with the process is not judicially reviewable, but the

Comptroller General's report is to assess the agency's compliance with the process, among other things.

- The process is to be conducted as follows:
 - Before proposing the rule, EPA is to submit to the Special Counsel for Advocacy of the SBA information concerning the potential impact of the rule and the type of small entities that is likely to be affected.
 - Within 15 days of receiving that information, the Special Counsel is to identify individuals representative of the affected small entities for purposes of soliciting their advice and information.
 - The agency is to convene a panel wholly made up of full time federal employees from the agency office responsible for the rule, OIRA and the Special Counsel. The panel is to review any draft proposed rule and draft initial regulatory flexibility analysis and collect the advice and recommendations of representatives identified by the agency, after consulting with the Special Counsel.
 - Within 60 days of convening, the panel is to report on the comments of the small entity representatives and its findings as to the issues the agency must address in the initial regulatory flexibility analysis. The report is to be made public and included in the rulemaking record.
 - The agency is to modify the draft proposed rule, initial regulatory flexibility analysis or decision on whether an initial analysis is required "where appropriate."
- The Special Counsel, in consultation with OIRA and the small entity representatives he identifies, may grant waivers from the panel review requirement under certain circumstances. Those circumstances include when the Special Counsel finds that the agency has adequately consulted with small entity representatives and taken their concerns into account in developing the proposed rule. The Special Counsel may also waive the requirement when he finds that "special circumstances require the prompt issuance of the rule" or that the review process would give the small entity representatives a competitive advantage over similar entities.

- The legislation does not prescribe when this panel review process must take place prior to proposal. The Agency will be consulting with the SBA and OIRA regarding the process.
- Rules subject to court-ordered deadlines are not expressly exempted from this process. The legislation does not expressly exempt rulemakings subject to court-ordered deadlines from the new rulemaking requirements, including the panel review process described above. EPA will be consulting with the SBA and OIRA regarding the Act's application to such rulemakings. In the meantime, Agency programs responsible for such rulemakings should discuss with their OGC contacts whether compliance with the requirements would require more time than the court-ordered deadlines provide.

IV. JUDICIAL REVIEW

- The standard for review of agencies' compliance with the RFA, as amended, is the same as the standard for review of most EPA rulemakings. The standard of review courts are to apply in judging an agency's compliance with the amended RFA is the standard set forth in the Administrative Procedures Act, which is the same standard courts apply in reviewing most of EPA's rules. The court is to hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.
- If a reviewing court determines that an agency failed to comply with the RFA, the court may, among other things, suspend enforcement of the rule as to small entities. In granting any relief in a suit brought under the amended RFA, courts are to order the agency "to take corrective action consistent with [the amended Act], including, but not limited to (A) remanding the rule to the agency, and (B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest."
- A number of agency actions under SBREFA are not judicially reviewable. Among the agency actions under SBREFA that are expressly not subject to judicial review are (1) compliance with the RFA process for obtaining small entity comments on a rule and (2) compliance with the provisions of SBREFA concerning Congressional review of rules (including effective dates for major rules).

SBREFA TIMELINES

Non-major rule promulgated before March 29

- SBREFA does not apply

Major rule promulgated on or after March 1 but before March 29

- Rule is subject to Congressional review and disapproval (60-day review period runs from March 29); effective date is not affected

Non-major rule promulgated between March 29 and June 27

- Final rule and other specified documentation must be sent to Congress and Comptroller General before rule can become effective
- Although rule can take effect after the rule and other specified documentation are sent to Congress, rule is still subject to Congressional review and disapproval

Major rule promulgated between March 29 and June 27

- Final rule and other specified documentation must be sent to Congress and Comptroller General before rule can become effective
- Rule cannot take effect earlier than 60 days after (1) submission to Congress and the Comptroller or (2) publication in the Federal Register, whichever is later
- Rule is subject to Congressional review and disapproval

Non-major rule proposed between March 29 and June 27, promulgated after June 27

- If regulatory flexibility analysis is required:
 - Final analysis must meet new requirements
 - Final analysis is subject to judicial review
 - EPA must publish small entity compliance guide(s)
- Likely that "no significant impact" certification will have to include a statement of the factual basis for certification and will be subject to judicial review
- Final rule and other specified documentation must be sent to Congress and Comptroller before rule can become effective
- Although rule can take effect after the rule and other specified documentation are sent to Congress, rule is still subject to Congressional review and disapproval

Major rule proposed between March 29 and June 27, promulgated after June 27

- If regulatory flexibility analysis is required:
 - Final analysis must meet new requirements
 - Final analysis is subject to judicial review
 - EPA must publish small entity compliance guide(s)
- Likely that "no significant impact" certification will have to include a statement of the factual basis for certification and will be subject to judicial review
- Final rule and other specified documentation must be sent to Congress and Comptroller before rule can become effective
- Rule cannot take effect earlier than 60 days after (1) submission to Congress and the Comptroller or (2) publication in the Federal Register, whichever is later
- Rule is subject to Congressional review and disapproval

Non-major rule proposed and promulgated after June 27

- If regulatory flexibility analysis is required:
 - EPA must convene small business advocacy review panel
 - Final analysis must meet new requirements
 - Final analysis is subject to judicial review
 - EPA must publish small entity compliance guide(s)
- "No significant impact" certification must include a statement of the factual basis for certification and is subject to judicial review
- Final rule and other specified documentation must be sent to Congress and Comptroller before rule can become effective
- Although rule can take effect after the rule and other specified documentation are sent to Congress, rule is still subject to Congressional review and disapproval

Major rule proposed and promulgated after June 27

- If regulatory flexibility analysis required:
 - EPA must convene small business advocacy review panel
 - Final analysis must meet new requirements
 - Final analysis subject to judicial review
 - EPA must publish small entity compliance guide(s)
- "No significant impact" certification must include a statement of the factual basis for certification and is subject to judicial review
- Final rule and other specified documentation must be sent to Congress and Comptroller before rule can become effective
- Rule cannot take effect earlier than 60 days after (1) submission to Congress and the Comptroller or (2) publication in the Federal Register, whichever is later
- Rule is subject to Congressional review and disapproval

TITLE III--SMALL BUSINESS REGULATORY FAIRNESS

SEC. 301. SHORT TITLE.

This title may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 302. FINDINGS.

Congress finds that--

- (1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;
- (2) small businesses bear a disproportionate share of regulatory costs and burdens;
- (3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;
- (4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;
- (5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and
- (6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

SEC. 303. PURPOSES.

The purposes of this title are--

- (1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;
- (2) to provide for judicial review of chapter 6 of title 5, United States Code;
- (3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

Subtitle A--Regulatory Compliance Simplification

SEC. 311. DEFINITIONS.

For purposes of this subtitle--

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 312. COMPLIANCE GUIDES.

(a) Compliance Guide.--For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) Comprehensive Source of Information.--Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on

statutory and regulatory requirements affecting small entities.

(c) Limitation on Judicial Review.--An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 313. INFORMAL SMALL ENTITY GUIDANCE.

(a) General.--Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) Program.--Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

(c) Reporting.--Each agency regulating the activities of small business shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

SEC. 314. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

(a) Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended--

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing information to small business concerns regarding compliance

with regulatory requirements; and

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996.".

(b) Nothing in this Act in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

SEC. 315. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the states, develop guides that fully integrate requirements of both Federal and state regulations where regulations within an agency's area of interest at the Federal and state levels impact small entities. Where regulations vary among the states, separate guides may be created for separate states in cooperation with State agencies.

SEC. 316. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle B--Regulatory Enforcement Reforms

SEC. 321. DEFINITIONS.

For purposes of this subtitle--

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 322. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended--

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) Definitions.--For purposes of this section, the term--

"(1) 'Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) 'Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA Enforcement Ombudsman.--

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall--

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C.App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) Regional Small Business Regulatory Fairness Boards.--

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall--

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

"(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) Powers of the Boards.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its

business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board."

SEC. 323. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) In General.--Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) Conditions and Exclusions.--Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to--

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a state;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) Reporting.--Agencies shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 324. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle C--Equal Access to Justice Act Amendments

SEC. 331. ADMINISTRATIVE PROCEEDINGS.

(a) Section 504(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance."

(b) Section 504(b) of title 5, United States Code, is amended--

(1) in paragraph (1)(A), by striking "\$75" and inserting "\$125";

(2) at the end of paragraph (1)(B), by inserting before the semicolon "or for purposes of subsection (a)(4), a small entity as defined in section 601";

(3) at the end of paragraph (1)(D), by striking "and";

(4) at the end of paragraph (1)(E), by striking the period and inserting "; and"; and

(5) at the end of paragraph (1), by adding the following new subparagraph:

"(F) 'demand' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount."

SEC. 332. JUDICIAL PROCEEDINGS.

(a) Section 2412(d)(1) of title 28, United States Code, is amended by adding at the end the following new subparagraph:

"(D) If, in a civil action brought by the United States, or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5 the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance."

(b) Section 2412(d) of title 28, United States Code, is amended--

(1) in paragraph (2)(A), by striking "\$75" and inserting "\$125";

(2) at the end of paragraph (2)(B), by inserting before the semicolon "or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5";

(3) at the end of paragraph (2)(G), by striking "and";

(4) at the end of paragraph (2)(H), by striking the period and inserting "; and"; and

(5) at the end of paragraph (2), by adding the following new subparagraph:

"(I) 'demand' means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount."

SEC. 333. EFFECTIVE DATE.

The amendments made by sections 331 and 332 shall apply to civil actions and adversary adjudications commenced on or after the date of the enactment of this subtitle.

Subtitle D--Regulatory Flexibility Act Amendments

SEC. 341. REGULATORY FLEXIBILITY ANALYSES.

(a) Initial Regulatory Flexibility Analysis.--

(1) Section 603.--Section 603(a) of title 5, United States Code, is amended--

(A) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States"; and

(B) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.".

(2) Section 601.--Section 601 of title 5, United States Code, is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting "; and", and by adding at the end the following:

"(7) the term 'collection of information'--

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either--

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code. "

"(8) Recordkeeping requirement.--The term 'recordkeeping requirement' means a requirement imposed by an agency on persons to maintain specified records.

(b) Final Regulatory Flexibility Analysis.--Section 604 of title 5, United States Code, is amended--

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain--

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the

assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof."

SEC. 342. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"Sec. 611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than--

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to--

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law."

SEC. 343. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the

Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration."

(b) Section 612 of title 5, United States Code is amended--

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 344. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) Small Business Outreach and Interagency Coordination.-- Section 609 of title 5, United States Code is amended--

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities" by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter--

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and

Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(d) For purposed of this section, the term covered agency means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

"(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

"(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

"(2) Special circumstances requiring prompt issuance of the rule.

"(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities."

(b) Small Business Advocacy Chairpersons.--Not later than 30 days after the date of enactment of this Act, the head of each covered agency that has

conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

SEC. 345. EFFECTIVE DATE.

This subtitle shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.

Subtitle E--Congressional Review

SEC. 351. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8--CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.

"801. Congressional review.

"802. Congressional disapproval procedure.

"803. Special rule on statutory, regulatory, and judicial deadlines.

"804. Definitions.

"805. Judicial review.

"806. Applicability; severability.

"807. Exemption for monetary policy.

"808. Effective date of certain rules.

"Sec. 801. Congressional review

"(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing--

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule, including whether it is a major rule; and

"(iii) the proposed effective date of the rule.

"(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress--

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders.

"(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the Chairman and Ranking Member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of--

"(A) the later of the date occurring 60 days after the date on which--

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register, if so published;

"(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date--

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this

section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

"(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive Order that the rule should take effect because such rule is--

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to any statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring--

"(A) in the case of the Senate, 60 session days, or

"(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though--

"(i) such rule were published in the Federal Register (as a rule that shall take effect) on--

"(I) in the case of the Senate, the 15th session day, or

"(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

"(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though--

"(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such

rule, related statute, or joint resolution of disapproval.

"Sec. 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ___ relating to ___, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which--

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register, if so published.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to

recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule--

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:.

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution--

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(g) This section is enacted by Congress--

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"Sec. 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"Sec. 804. Definitions

"For purposes of this chapter--

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in--

"(A) an annual effect on the economy of \$100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

"(3) The term 'rule' has the meaning given such term in section 551, except that such term does not include--

"(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

"Sec. 805. Judicial review

"No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"Sec. 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"Sec. 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"Sec. 808. Effective date of certain rules

"Notwithstanding section 801--

"(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

"(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines."

SEC. 352. EFFECTIVE DATE.

The amendment made by section 351 shall take effect on the date of enactment of this Act.

SEC. 353. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking..... 801".

TITLE IV--PUBLIC DEBT LIMIT**SEC. 401. INCREASE IN PUBLIC DEBT LIMIT.**

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "\$5,500,000,000,000".